IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1894

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

WINDSOR POWER HOUSE COAL COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Bituminous Coal Operators' Association, Inc., herein called "BCOA", not having received consent of the Petitioner, hereby requests leave of the Court to file the enclosed Brief, *Amicus Curiae,* in the above case.

BCOA'S INTEREST AND WHY THE FILING IS DESIRABLE

BCOA is a national association of bituminous coal producers, organized in 1950 and continuing in being until the present time. BCOA has approximately 50

direct members and some local coal association members, including the major coal producers in all of the bituminous coal mining states. Its members produce about 75 percent of the coal mined under the National Bituminous Coal Wage Agreement. BCOA negotiates and assists in interpreting this Agreement.

BCOA was organized for the purpose of attempting to help bring stability out of chaos in employer-employee relations in the coal industry. These efforts have been successful to a large degree, but the continued increase in the incidence and magnitude of wildcat strikes in recent years has presented an imminent threat to the production of coal and to the stability of employment in the coal industry.

This case is before the Court on a Petition for a Writ of Certiorari by the United Mine Workers of America, and Respondent, Windsor Power House Coal Company, will file on this date a Response joining in the request for the Writ. If the Writ is issued, the decision should establish legal guidelines to determine the application of the recent *Buffalo Forge* decision, —— U.S. ——, 96 S.Ct. 3141 (1976), to the recurring wildcat strikes in the coal industry. This will have substantial and even crucial impact on the effectiveness and integrity of the agreements between BCOA and the United Mine Workers of America, and on the ability of the bituminous coal industry to meet the Nation's need for coal.

BCOA's members have over a period of years felt the costly impact of recurring wildcat strikes, some affecting virtually the entire industry. Miners, widows, and pensioners have also suffered great losses. The industry has just completed a four-week wildcat

strike which had idled over 100,000 coal miners in all the bituminous coal producing states.

All BCOA members will be affected by the decision of this Court.

WHEREFORE, BCOA moves the Court to allow the filing of the Brief, *Amicus Curiae,* which is submitted herein with the requisite number of printed copies.

Respectfully submitted,

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August 18, 1976

IN THE

Supreme Court of the Untied States

OCTOBER TERM, 1975

No. 75-1894

UNITED MINE WORKERS OF AMERICA, ET AL.,

Petitioners,

v.

WINDSOR POWER HOUSE COAL COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF AMICUS CURIAE OF BITUMINOUS COAL OPERATORS', INC.

BCOA'S INTEREST

The Bituminous Coal Operators' Association, Inc., herein called "BCOA", is a national association of coal operators, organized in 1950 for the purpose of negotiating and assisting in interpreting BCOA's national agreements with the United Mine Workers of America, herein called "UMWA." BCOA has approximately 50 members who operate in all of the bituminous coal mining states and who collectively produce approximately 75 percent of the bituminous coal mined under the National Bituminous Coal Wage Agreement of 1974, herein called the "1974 Agreement."

BCOA was formed against the backdrop of the labor strife in the coal industry during the 1940's, a period characterized by strikes and Government seizures of the coal mines. BCOA's purpose was to create more stable labor relations and to establish and maintain harmonious relationships between the coal operators and their employees and their employee representative, the UMWA. These efforts were successful in that since the early 1950's a succession of national labor agreements have been negotiated between BCOA and the UMWA without any seriously prolonged or crippling economic strikes. However, during recent years, particularly from 1974 to the present, escalating wildcat strikes are threatening to create labor chaos in the coal industry.

The latest contract renewal was the 1974 Agreement which became effective in December 1974 to run for a three-year period. This Agreement was hailed as one of the most progressive labor agreements ever negotiated. It provides for wage and benefit levels which are at least as beneficial to the miners as those in any other industry. It also contains provisions for the handling of grievances and for various types of expedited arbitration over a broad range of issues. All local grievances, disputes or local trouble of any kind is subject to final and binding settlement through the grievance-arbitration procedures of the Agreement. There is no labor agreement of record that contains any broader grievance-arbitration clause.

The provisions for grievance handling and arbitration in the 1974 Agreement are not moribund. They are alive and functioning. Since September 1975, over 2,000 grievances have been submitted to arbitration

under the Agreement. This is in contrast to earlier years when about 600 to 700 grievances were arbitrated each year. The grievance-arbitration procedures are equitable and readily available to the miners, and they are being used by the vast majority of the coal miners. One new feature of the arbitration process added in 1974 was the provision for a National Arbitration Review Board established for the purpose of reconciling conflicts in panel arbitrator decisions and for bringing about uniformity in the interpretation of the National Agreement.

But, unfortunately, there are a few coal miners who from time to time take the law in their own hands and engage in and foster wildcat strikes over an arbitrable local grievance or dispute. These local strikes are sometimes escalated into a widespread national wildcat strike. Such escalation is normally accomplished by roving "stranger" pickets.

Despite the bright promise of the 1974 Agreement, labor stability in the coal industry has steadily worsened since that Agreement was signed. There were more wildcat strikes in the bituminous coal industry in 1975 than ever before in history, and 1976 will be the worst year yet. In 1975, approximately 16 million tons of production were lost due to wildcat strikes; the miners' health and benefit funds lost approximately 22 million dollars in revenue; coal miners lost approximately 79 million dollars in wages; and the ability of the bituminous coal industry to meet the nation's increasing fuel requirements was, and continues to be, placed in jeopardy.

As this brief is being written, there is a wildcat strike in progress going into its fourth week, engulf-

ing all or part of the major coal producing states. It is estimated that over 100,000 coal miners have been idled by this wildcat strike which started at a single mine in West Virginia because of a dispute over the classification of one job.

This local dispute was over a clearly arbitrable issue, and was in fact arbitrated. Yet it has been the precipitating cause of the shutdown of about two-thirds of the total national production of bituminous coal. It has already inflicted severe losses on the coal miners, the coal industry, the Benefit and Pension Funds, the coal communities, the coal states, and the Nation.

Apart from the other astronomical economic losses arising from these wildcat strikes, they pose an imminent threat to the pension and health benefits of the active miners and the 80,000 pensioners.

In the 1974 Agreement, the mine operators agreed to double their contributions to these Trust Funds and dramatically increased the pensions both for present pensioners and for the future pensions of active miners. The health and medical benefits plans in the bituminous coal industry are among the most liberal in the Nation.

But, the contributions to these Trust Funds by employers are based on a combination of tons of production and cents per hour for hours actually worked. Consequently, their financial stability has been threatened by the rising level of wildcat strikes to the point where the two 1950 Trusts (the Pension Trust and the Benefit Trust for Retired Miners) are already in serious trouble. The 1950 Benefit Trust is now bankrupt, and the 1950 Pension Trust is running a deficit.

The Board of Trustees, the Chairman of which is appointed by the UMWA, on four occasions has issued public statements giving warning of the damage to the Trust Funds arising from the recurring incidence of wildcats. In a release, dated July 30, the Trustees state that the 1950 Benefit Trust (providing benefits for retired miners) is operating at a deficit and has no financial reserves. It also states that the loss to the Trusts arising from the current strike is estimated at $800,000 per day. This has since risen to 1.2 million dollars a day.

BCOA and its members have a grave and continuing interest in preserving the integrity of the periodic agreements negotiated with the UMWA. BCOA and its members also have a grave and continuing interest in preserving the grievance-arbitration procedures of those agreements and in maintaining employment stability and production in the bituminous coal industry. BCOA and its members have a similar direct interest in the stability of the Pension and Benefit Trusts. BCOA believes that these interests should be shared by the UMWA and its members and constituent bodies throughout the industry; and finally, the threat which wildcat strikes present to these interests should be the concern of the public as well.

Recurring and escalating wildcat strikes, to our knowledge, are rare in other industries, but are a serious and mounting threat to the stability of the coal industry.

BCOA is dedicated to encouraging the use of the grievance-arbitration procedures of the 1974 Agreement to settle disputes, and generally these procedures are being used. BCOA knows of no instance

where a mine operator has failed or refused to arbitrate a local dispute of any kind. The problem of the wildcat strike arises where a few strong-willed men for reasons known only to them flaunt these procedures, and engage in spreading wildcat strikes.

These wildcat strikes are usually spread by roving, or "stranger", pickets. In the normal case, as is true here, these "stranger" pickets conceal their identities. They are aided in their destructive conspiracy by the tradition of UMWA members to cease work whenever a picket or pickets appear at their mines, regardless of from whence they come, their identities, or the equity or lack thereof of their cause. Thus is the stage set for a handful of men to create havoc and industrial anarchy in the bituminous coal industry.

BCOA does not believe in nor advocate the settlement of labor disputes in the courts. BCOA encourages the settlement of disputes by the grievance-arbitration procedures of the agreement. BCOA is aware that some miners in West Virginia have attacked the courts and have attacked the industry for taking court action against wildcat strikes. BCOA can only say that these attacks are unwarranted and based on distorted reasoning. In the bituminous coal industry, until the coal miners accept it, the grievance-arbitration system, as experience has shown, will not work without the aid of the courts. BCOA members only have gone to the courts in order to attempt to channel arbitrable issues away from the picket line and into the peaceful procedures which were mutually agreed upon between BCOA and the UMWA. Recourse to the courts to preserve the integrity of the agreement has always been a last resort. But it is at times a necessary one. Without the courts, resort to arbitration will be voluntary, although written as mandatory; and wildcat strikes will go unchecked until they destroy the integrity of the national agreement which all parties have pledged to uphold, and undermine the stability of employment and production in the bituminous coal industry.

Because of its direct and overriding interest in improving labor relations, promoting labor peace, insuring stability of employment, and encouraging respect for the agreement, BCOA files this brief to respectfully bring to the attention of this Court the scope and seriousness of the issues which are here brought before it.

Without intent to overstate, BCOA believes that the future stability of labor relations and employment in the bituminous coal industry, the future of the United Mine Workers, and the future of the concept of a national labor agreement, will, to a large extent, depend upon the ultimate resolution of the issues here presented.

The Nature of Wildcat Strikes in the Coal Industry

Wildcat strikes typically start with a strike at a mine over some grievance or dispute which is clearly arbitrable under the national agreement. The local union, or a union member, chooses not to arbitrate and goes on strike. One or more men walk out and the others blindly follow. The mine is then on strike. Unless the strike is spread by roving pickets, the single mine strike normally lasts a day or two and the men return to work. Several wildcat strikes like these occur without fail nearly every day.

The second phase of a typical wildcat strike occurs when the strikers at the originating mine fan out and

picket out other mines. They do not picket openly, but covertly. They do not carry signs or proclaim their cause. They do not picket in the customary sense. They come to a mine in roving caravans, shut it down, and move on to another mine, returning later, if necessary, to shut it down again. Their tactics are successful largely because of the miners' tradition of ceasing work when a "picket" appears at their mines. Fear also plays its part. It is common practice for the miners at a mine closed by roving pickets to in turn picket out neighboring mines so that there is a growing momentum and a snow-balling effect. This explains why in the current work stoppage (August 1976) fewer than 200 miners at one mine of Cedar Coal in Boone County, West Virginia, did, within a few days, cause the shutdown of most of the bituminous coal mines in the seven bituminous coal producing states and idled over 100,000 miners.

We now turn to a discussion of the case presently before this Court.

QUESTION PRESENTED

BCOA adopts the statement of the question presented in the Windsor Power response to the Petition for a Writ of Certiorari.

Perhaps more simply stated the question is:

Whether a wildcat strike in the bituminous coal industry—precipitated over an arbitrable issue—is enjoinable against all local unions participating in the strike where all local unions and their members have a direct interest in the underlying arbitrable dispute by reason of the existence of a single multi-employer unit and multi-employer contract containing terms and provisions common to all.

STATEMENT OF THE CASE

Shortly after the 1974 Agreement was executed in December 1974, a dispute arose between North American Coal Corporation, a member of BCOA, and the UMWA over the meaning and application of the "Helper Clause" in the 1974 Agreement. This provision was new in the 1974 Agreement and appears in Article V. It provides, in effect, for the employment of helpers on certain mining machines and equipment.

North American and the Union disagreed on the meaning of this provision as applied to a machine called a "Roof Bolter." When the dispute could not be resolved through the grievance procedure, the Union, rather than arbitrate the issue, went on strike.

When the North American locals went on strike, they sent out pickets to the mines of other companies and shut them down as well.

One of these mines was the Beech Bottom Mine of Windsor Power House Coal Company. When the pickets showed up at the Beech Bottom Mine, the miners at that mine failed to show up for work. The pickets did not identify themselves and neither the Beech Bottom local nor the UMWA District made any effort to identify them or to determine who they were or why they were picketing. Union members testified that the Beech Bottom miners were simply following a tradition of not crossing a picket line. Other witnesses testified that they refrained from work because of fear of violence. Another union witness testified that he thought the pickets were college students. The essential element of *Buffalo Forge* of a "sympathy" strike was not present.

Under the facts, and after a full hearing, the District Court issued a preliminary injunction under *Boys Markets* which was upheld by the Fourth Circuit Court of Appeals.

The Union petitioned for review and Windsor Power joined in the Petition. BCOA joins in the request that the Court grant the Writ.

REASONS FOR GRANTING THE WRIT

BCOA joins in the Petition for a Writ because it strongly urges the Court to review this case and clarify *Buffalo Forge* as it applies to this recurring type of wildcat strike in the bituminous coal industry. The issue is one of national importance. An expeditious resolution is imperative in the national interest.

Unlike other unionized industries where wildcat strikes are a rarity, the coal industry has become increasingly victimized by wildcat strikes arising over arbitrable disputes. This is despite the fact that the national agreement has one of the broadest and most available grievance-arbitration procedures in existence. Every contract dispute and "local trouble" of any kind is subject to grievance-arbitration. Moreover, as already stated, the 1974 Agreement provides for a national Arbitration Review Board to reconcile differences between panel arbitrators as to the meaning and interpretation of the national agreement.

By and large, the UMWA members observe and follow this procedure. But, on occasion, employees at a particular mine spurn these arbitration procedures and resort to economic force to gain their demands. When this happens, a few recalcitrant men are able to spread the wildcat strike to other locals and to

shut down an entire UMWA District, or an entire state, and even the entire bituminous coal industry.

The result has been disastrous. There have been regularly recurring wildcat strikes in the coal industry, and they have been escalating. It is not an overstatement to say that we are nearing industrial anarchy in the coal fields.

The ink was hardly dry on *Buffalo Forge,* which was issued on July 6, when on July 19, a strike broke out in West Virginia over a grievance that was both arbitrable and arbitrated. The Union did not like the result and, by the use of roving pickets, shut down practically the entire industry for four weeks. The costs to all concerned were enormous and irremediable. Yet, for the most part, District Judges, overreacting to *Buffalo Forge,* refused either to issue or to enforce injunctions.

While this strike eventually will end, there can be no doubt that similar destructive stoppages will recur at frequent intervals and, if experience in recent years is any guide, they will escalate.

As previously stated, in 1975, approximately 16 million tons of production were lost due to wildcat strikes, and 1976 will exceed these losses. The loss of wages to miners is disastrous; and the Benefit and Pension Funds for miners have suffered grave losses which now pose an immediate threat to their financial stability, and to the health and pension benefits of current and retired miners.

The International Union has proven itself incapable or unwilling to take effective action to stem this tide.

The fact is that only the courts can provide a remedy. BCOA does not believe that the Court in *Buffalo Forge* intended to grant to a few willful men a roving license to destroy the bituminous coal industry, the coal miners, their Union, and to endanger the public welfare.

A. *Boys Markets* Not *Buffalo Forge* Should Control the Equitable Right to Injunctions Against Wildcat Strikes in the Coal Industry

1. The Court in *Buffalo Forge* reaffirmed rather than overruled *Boys Market*

Some of the district courts appear to have construed *Buffalo Forge* as overruling *Boys Markets.* This is not the case. *Buffalo Forge* reaffirmed the basic thrust of *Boys Markets* which endorses the use of the Federal Courts to uphold the sanctity of the arbitration process.

Buffalo Forge simply holds that where there is no underlying arbitrable dispute which is being undermined by a sympathy strike, *Boys Markets* does not apply.

There was no underlying arbitrable dispute in *Buffalo Forge.* In that case, there were two separate local unions representing two separate groups of employees in two separate bargaining units. One had its own separate contract and the other was negotiating one. The dispute over the negotiation of an agreement was not arbitrable and the union striking in sympathy had no arbitrable dispute other than the sympathy strike itself.

Thus, there was no underlying arbitrable issue of any kind, and the majority held that for this reason the integrity of the arbitration process was not undermined or endangered by the sympathy strike.

Here, the strike started and spread over an arbitrable dispute. Since the original strike at the originating mine was arbitrable, the spread of the strike was designed solely for the purpose of increasing the pressure on the industry to yield. This undermined and threatened the integrity of the arbitration procedure, and was therefore enjoinable against all participating locals.

2. The original precipitating strike in *Buffalo Forge* was primarily a legal strike, whereas here the original precipitating strike was in derogation of the arbitration procedure and enjoinable

The original strike in *Buffalo Forge* was a legal strike, not over an arbitrable issue, and therefore not enjoinable. Just the opposite was true here. The original precipitating strike was in derogation of the arbitration process and enjoinable. It would defy all logic and commonsense to hold that where the original strike is enjoinable under *Boys Markets,* a strike in support of the unlawful enjoinable strike is itself lawful and unenjoinable. Both are equally in opposition to the national policy favoring the arbitration of disputes.

In *Buffalo Forge,* the Court stated:

> ". . . The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between

the employer and respondents. *The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain.*" (emphasis added)

The situation presented here is wholly distinguishable from *Buffalo Forge.* Overriding all else, the essential difference between *Buffalo Forge* and this case is the one emphasized by the Supreme Court in the above quote from the majority opinion. In *Buffalo Forge,* the strike had neither the purpose nor effect of evading an obligation to arbitrate or of depriving the employer of his bargain. In this case, that was the whole purpose of the strike and the accompanying picketing. That conclusion flows so patently from the facts that there is no possible basis for refuting it.

3. The more widespread the strike the greater the injury to the arbitration process

It is obvious that the strikers were, willy-nilly, supporting a massive assault on the arbitration process. To hold that such a widespread strike immunizes the local union from *Boys Markets* is purely and simply to condone mass lawlessness.

4. There was no "sympathy" strike here because all local unions and their members had a common and direct interest in the outcome of the dispute

A sympathy strike, as Justice Stevens said in *Buffalo Forge,* "does not directly further the economic interests of the members of the striking union or contribute to the resolution of any dispute between that local, or its members, and the employer." Slip Opinion, p. 17.

The NLRB has held that BCOA constitutes a single multi-employer bargaining unit, 179 NLRB 479 (1969). There is also a single national agreement with uniform terms and conditions.

Given the existence of a single agreement in a single multi-employer bargaining unit, and an arbitration procedure designed to insure conformity of interpretation and application, BCOA submits that all members of the Union employed by members of BCOA are mutually bound to abide by the common grievance-arbitration procedures. In this unitary relationship, the concept of a sympathy strike does not exist. The term "sympathy strike" connotes separateness of unions, separateness of bargaining units, and separateness of employee interests. That is not the situation here. All coal miners under BCOA's national agreement with the UMWA have a direct and common interest in all disputes involving the interpretation and application of the national agreement. When any of them initiates a strike over an interpretation of the agreement, and others go out in support of the original union's demands, they are all, in truth and in fact, striking over a dispute in which they all have a common interest.

B. The Footnote Reference in *Buffalo Forge* to *Armco Steel* and Other Appellant Court Decisions Was Not Intended to Bar Injunctions Against Wildcat Strikes

A question may arise as to footnote 10 in the Majority Opinion in *Buffalo Forge.* But this footnote must be read with care. It has only a narrow application. What it states is that to the extent that this and other Courts of Appeals have assumed that a mandatory arbitration clause implies a commitment not to engage in "sympathy" strikes, they are wrong.

This statement is carefully drawn. It does not say that *Boys Markets* injunctions can no longer be issued against wildcat strikes in the coal industry. It does not state that the decisions of the Appellate Courts upholding such injunctions were necessarily wrong. These decisions were only declared to be wrong to the extent that the Appellate Courts may have assumed that there was an implied commitment not to engage in *sympathy strikes*. In the same term in which the Supreme Court granted review and decided *Buffalo Forge,* the Court denied *certiorari* in both *Island Creek* v. *UMWA,* and *Armco Steel* v. *UMWA,* 423 U.S. 877 (1975), allowing to stand the decision of the lower courts upholding the issuance of injunctions against wildcat strikes in the coal industry.

In our opinion, footnote 10 is not applicable to this case for the reason that, as we have shown, what this Court has before it is not a sympathy strike within the meaning of *Buffalo Forge.* Because of the unity of contract and the commonality of interests among UMWA members, and their direct and continuing interest in the underlying dispute, the members of the Beech Bottom local have an equally direct interest in this dispute, as did the North American locals where the dispute was first precipitated.

This strike was not a sympathy strike by a sister union supporting another union which was striking over contract negotiations for its own separate agreement, or engaging in any other legal primary strike. This strike was part of a coordinated effort to force upon Windsor Power, and in consequence upon all companies party to the national agreement, the union's interpretation of a substantive contract provision common to all UMWA members and to all BCOA com-

panies. Viewed in this correct light, all participating locals were combined in striking to evade their obligation to arbitrate the dispute.

CONCLUSION

For the above reasons, BCOA supports the Appeals of Windsor Power House Coal Company, and urgently requests the Court to grant the Writ so that the application of *Buffalo Forge* to wildcat strikes in the coal industry may be expeditiously clarified.

Respectfully submitted,

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